to settle the appropriate figure in the light of their Lordships' judgment and vary its order accordingly.

Order accordingly.

Solicitors: *Stephenson, Hardwood & Tatham.*

CHAN CHOW KIAN v. INTERNATIONAL TRADING CO.

[O.C.J. (Abdul Aziz J.) May 7, 1969]

[Kuala Lumpur — Civil Suit No. 1216 of 1966]

Contracts — Agency — Revocation of — Sufficient cause — Contracts (Malay States) Ordinance, 1950, s. 158.

The plaintiff brought an action for goods sold and delivered. The defendants counterclaimed that the plaintiff had unjustly and deliberately terminated his appointment as his distributor of the goods. The plaintiff had terminated the agency because of late payments.

Held: on the facts the plaintiff had sufficient cause to terminate the agency and therefore the counterclaim should be dismissed.

Case referred to:—

(1) *Vishnucharya* v. *Ramchandra* (1881) I.L.R. 5 Bom. 253.

CIVIL SUIT.

Cheng Tim Pin for the plaintiff.

H. Elias for the defendants.

Abdul Aziz J.: This is a claim by a wholesaler (plaintiff) against a distributor (defendant) for the price of goods sold and delivered to the defendant by the plaintiff amounting to $20,551.99; and a counterclaim by the defendant for breach of contract and damages.

Since the defendant has admitted the liability in respect of the plaintiff's claim and consent judgment has accordingly been entered, the matter remaining to be tried is the counterclaim of the defendant. On the counterclaim, the defendant alleges that on 2nd January 1964 the plaintiff's Kuala Lumpur agent appointed him as the sole distributor for the States of Malaya in respect of certain lines of cosmetics and pens imported by the plaintiff's firm. The appointment was by a letter signed by one Chia Chan Fan, purporting to be the manager of the plaintiff's firm and it reads:—

"The Manager,
M/s International Trading Co.,
14, High Street,
KUALA LUMPUR.

Dear Sir,

I take the pleasure to inform you that I CHIA CHAN FUN manager of M/s Fen Brothers Co., Kuala Lumpur branch, hereby appoint your company M/s International Trading Co., as the sole-distributor for Helen Neushaefer Cosmetics and Rotax Fountain and Ball Pens for the Federation of Malaya.

This appointment is for a period of 5 years starting from the 1st January 1964 to the 31st Dec. 1968.

The above appointment is hereby made to M/s International Trading Co., after their very successful sales of our product for the year 1963. I wish you the best of luck in handling our product and may your sales be increased day by day for the benefit of our houses.

Yours faithfully,
Sd. illegible."

It is alleged that in September 1966 (before the expiry of five years), the plaintiff unjustly and unilaterally terminated his appointment as distributor in breach of his contract.

The first question as to whether or not the appointment is valid depends on pure questions of fact. Evidence shows that the plaintiff held out Chia Chan Fun as the manager of the company in Kuala Lumpur and that he knew or must have known of the appointment by his agent of the defendant as distributor. Mr. Chia stated — and I have no reason to doubt him — that discussions between him and the defendant took place about a month before the actual appointment. His principal, i.e., the plaintiff, knew about the negotiations and agreed to it. Even if the plaintiff did not ratify the appointment, there is evidence to show that he had impliedly accepted defendant as his agent for the purposes of distributing his products. There is evidence to show that after the appointment, the defendant acted as a distributor and, until his appointment was revoked, had boosted the sales of the plaintiff's products; and that the plaintiff had accepted the benefits and taken advantage of the defendant's services after his appointment. The letter of appointment has, in my view, the same effect as if it was signed by the plaintiff himself.

By the terms of the appointment, it is clear that the plaintiff had appointed the defendant as his agent (distributor) to distribute his goods. The appointment was made without any valuable consideration. No commission or remuneration was payable to the agent in consideration of the services that he was expected to render. The defendant admitted that "our dealings were on consignment basis and I was given credit for the goods". The invoices show that the plaintiff supplied goods to the defendant from time to time and these individual purchases were billed as and when supplied; and that although 30 days credit was mentioned in the vouchers, in practice the defendant was given 90 days credit for the purchases. There was no suggestion that the defendant was receiving these goods under a running account. It is reasonable to infer from

the nature of the transaction that the defendant was entitled to keep any profit he made on sales to dealers. The defendant admitted that he had delayed payments for over 90 days and that to date he owed the plaintiff $20,551.99, but he stated that he defaulted payment because the plaintiff had been guilty of late deliveries. The late payments according to him were a means of protest against the late deliveries. Because of the late payments and the difficulty of collecting money from the defendant, the plaintiff delayed or stopped the order for goods; and on 9th September 1966, his appointment as agent (distributor) was revoked. In dealings of this nature where goods were supplied on consignment basis, each consignment became a distinct contract; and payment for the goods within the agreed period would be an essential term of the contract, but the question of prompt deliveries could not be a matter of implication. The question of supply depends on extraneous considerations, particularly the availability of those goods at the time of the order. In any event, no evidence has been adduced to show that the plaintiff was guilty of non-deliveries or late deliveries of goods, apart from a mere assertion of facts. Under those circumstances, the plaintiff had sufficient cause to refuse to supply further which terminated the agency (distributorship).

In *Vishnucharya v. Ramchandra*[1] the appellate court was dealing with a somewhat similar case involving the question of construction of a letter of appointment and termination of agency. In that case, the plaintiff was appointed by the defendant to collect rents from his property in perpetuity and from the rents the plaintiff could take Rupees 42 annually as his wages. Melvill J. stated:—

"As between the parties, the appointment was valid and binding, whether or not any valuable consideration passed; for the mere acceptance of the office by the plaintiff was a sufficient consideration for the appointment."

The judgment went on to deal with the question of revocation of the authority of an agent which is also relevant to this case:—

"The remedy for the improper revocation of an agency lies, under ordinary circumstances, in an action for damages for breach of contract. By section 205 of the Contract Act (similar to our section 158), the principal is bound to make compensation to the agent, whenever there is an express or implied contract that the agency shall be continued for any period of time. This would probably always be the case when a valuable consideration had been given by the agent. An action for damages might probably have been maintained in the present case, whether a valuable consideration was given by the plaintiff or not."

The valuable consideration here must be more than undertaking the agency. Even assuming that there was a contract, under what circumstances could the agency be revoked? The answer is to be found in section 158 of the Contracts (Malay States) Ordinance, 1950, which states:—

"Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, ... for any previous revocation or renunciation of the agency *without sufficient cause.*"

Since the plaintiff had sufficient cause to terminate the agency, no damages would be payable for the unexpired period of the agency.

In the circumstances, I would dismiss the counterclaim with costs.

Counterclaim dismissed.

Solicitors: *Lee Beng Cheang & Co.; Shearn Delamore & Co.*

TENGKU BESAR ZABAIDAH v. KONG CHENG WHUM*

[O.C.J. (Syed Othman J.) May 8, 1969]
[Kota Bharu — Civil Suit No. 9 of 1965]

Landlord and Tenant — Rent — Excess payment — Counterclaim for — Limitation — Standard rent under Control of Rent Ordinance, 1956 as amended by Control of Rent (Application to Kelantan) Enactment, 1964 — Expiration of Ordinance — Revival of — Effect of.

Legislation — Repealed law — Claim under — Lapse of Ordinance — Revival of — New Act repealing Ordinance.

The defendant counterclaimed for a sum of $11,455 which he alleged to have been paid in excess of the lawfully permitted maximum rent for certain premises in Kota Bharu, Kelantan, for the period from June 1, 1947 to February 28, 1965. He relied on the provisions of the Control of Rent Ordinance, 1956 and, in view of the Limitation Ordinance, 1953, limited his counterclaim to a period of 6 years from January 21, 1959. It was contended for him that the counterclaim would have to be based on section 8(3) of the Control of Rent Act, 1966: notwithstanding the fact that the provision of the 1966 Act did not exist at the time of counterclaim as the hearing of the action was after the commencement of the 1966 Act, the law at the time of the proceedings would be applicable.

The Control of Rent Ordinance, 1956 was applied to Kota Bharu till June 30, 1964 when it lapsed. From July 1964 to December 1964 Kelantan had no legislation governing control of rent. From January 1, 1965 it was revived with certain amendments by the Control of Rent (Application to Kelantan) Enactment, 1964. The Control of Rent Act, 1966 which repealed the 1956 Ordinance, came into force on January 1, 1967.

Arising from the state of the law the questions for the court to decide in this case were: (a) whether a claim for overpayment of rent lies after the expiration of a written law; (b) whether there is any right to a claim for overpayment during the period in which the general law of contract applied; and (c) the rights of the tenant after the revival of the Control of Rent Ordinance, 1956, as modified by the State Enactments.

Held, dismissing the counterclaim: (1) the rights of the defendant to a standard rent in this case were

*The Federal Court, whose judgment will be reported in due course, dismissed the defendant's appeal on November 28, 1969.